IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

CRP.No. 489 of 2004

(CMA. 342/2002 of D.C. & SESSIONS COURT,KOLLAM)

REVN. PETITIONER/APPELLANT:

A. NISAM,
KALLUVILA PUTHEN VEEDU,
PERAYAM, UMAYANALLOOR P.O.,
KOLLAM.

BY ADV. SRI.D. SAJEEV

RESPONDENTS/RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE DIVISIONAL FOREST OFFICER,
PUNALUR.

BY SPL. GOVERNMENT PLEADER(FORESTS) SHRI M.P. PRAKASAM.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO. 489 OF 2004.

ORDER ON I.A.NO. 1381 OF 2004 IN C.R.P.NO. 489 OF 2004.

DISMISSED.

03.12.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 489 OF 2004

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Dated this the 3rd December , 2007

O R D E R

The petitioner is the owner of one Mahindra jeep bearing registration No. KL.7H.9855. It was being driven by one Hussain at the relevant period during which the occurrence in the case took place.

2. On 14.12.1999, the Sub Inspector of Police, Punalur and party while on petrol duty seized the jeep at 1.00 p.m. They arrested the driver and another person. Three other persons who were in the jeep ran away. A mahazar was prepared on 14.12.1999. It was found that four pieces of timber were being transported in the vehicle. The timber was described as 'Myla', which was found to be incorrect subsequently and it was identified as 'teak'. Since the case related to a forest offence , the arrested persons were handed over to the forest officials having jurisdiction over the area along with the mahazar and records. Another mahazar was prepared by the forest officials on 15.12.1999 wherein it was recorded that the sawn pieces of timber are very old and are of 'teak' species. It was found that the timber was sub merged in water for quite long time. The value of the timber was assessed at Rs. 7866/- . The value of the vehicle involved in the offence was assessed at Rs. One lakh as per the mahazar.

3. The matter was placed before the Divisional Forest Officer who is

the authorised officer to exercise the powers under section 61A of the Kerala Forest Act. Notice was issued to the petitioner and other persons involved in the case. The petitioner stated that at the relevant time he was at Palakkad and he had issued specific instructions to the driver Hussain that the vehicle should not be used for any activity involving forest offence. The vehicle was released to the petitioner as directed by this court in O.P. 32713 /99 on 13.01.2000.

4. On 15.12.1999, the persons who were arrested,viz., Suresh and Hussain had given statements before the Range Officer, Anchal. Hussain stated that he was the driver of the vehicle for the last one year and that on 14.12.1999, three persons requested him to transport four pieces of timber collected from the river and kept near Tholicode bridge and to transport the same to the nearby saw mill. He stated that he took the jeep near the Tholicode bridge about 100 meters north on the bank of Kallada river. The four pieces of timber were concealed in the river bank and those were loaded in the jeep, it is stated. While the vehicle was being proceeded with, the police party intercepted the vehicle . He also stated that he ran away on seeing the police. Other persons also ran away. The police chased Hussain and Suresh and arrested them.

5. On investigation by the Range Officer, it was revealed that there was no loss of timber from the respective jurisdiction of Pathanapuram Range and Kulathupuzha Range. The timber involved in the case was one sawn square log stranded near Tholicode bridge . It was sunk in water for quite long time. This

timber log was cut into pieces by the accused persons and they transported the same in the vehicle owned by the petitioner. The investigating officer found that the timber belongs to the Government .

6. Before the authorised officer , a request was made by the petitioner to cross examine the prosecution witnesses. He also requested for furnishing copies of the relevant records. The request for cross examination of the witnesses and for supply of copies was turned down by the authorised officer.

7. Before the authorised officer, the petitioner put forward a case that four persons including Suresh hired the vehicle for going to Maniyar . They wanted to transport the timber to Karavaloor. Hussain, the driver, refused to load the timber . The persons who hired the vehicle threatened the driver and ultimately he had to yield to the request under threat. The authorised officer did not accept this contention put forward by the petitioner . It was found that the driver had no such case at the time when he made the statement.

8. The authorised officer came to the conclusion that the timber belongs to the Government and a forest offence was committed in the matter of transportation of the timber belonging to the Government. It was also held that the vehicle in question, viz., KL.7H.9855 was used in the offence. Hussain, the driver of the vehicle was driving the vehicle at the relevant time. The authorised officer also found that the petitioner herein who is the owner of the vehicle failed to prove that he had taken all reasonable precautions to prevent

the vehicle from being used for commission of offence. On these findings, the authorised officer confiscated the vehicle under section 61A of the Kerala Forest Act.

9. The petitioner challenged the order of the authorised officer in C.M.A.NO. 342 of 2002 on the file of the court of the District Judge, Kollam. The court below dismissed the appeal and confirmed the order passed by the authorised officer.

10. Learned counsel for the petitioner would submit that the proceedings for confiscation are vitiated by the principles of natural justice. On 11.09.2001, the revision petitioner filed an application before the authorised officer stating that the petitioner wants to adduce evidence and he also expressed his intention to cross examine the prosecution witnesses and for that purpose, to engage a lawyer. As per the order dated 12.09.2001, the authorised officer granted sanction to engage a lawyer. The said order further reads thus:

> *"You are requested to produce relevant documents to adduce evidences.*"

Again, another petition was filed by the petitioner which is not seen dated stating thus:

> *"In the interest of justice and for proper adjudication of the enquiry proceedings, I may be permitted to cross examine the prosecution witnesses in ORD. 5/99 of Anchal Forest Range"*.

It was further requested that copies of the relevant records relied on in this

proceedings by the prosecution may also be served on him. This request was rejected as per endorsement dated 01.11.2001 on the said petition. On 15.12.2001, the petitioner submitted a petition to the authorised officer stating that as per order dated 16.11.2001 he was permitted to peruse the relevant records in the presence of the senior superintendent of the office of the Divisional Forest Officer, Punalur and that the petitioner could not get at the records in spite of several efforts having been made.

11. Learned counsel for the petitioner also pointed out that the petitioner is absolutely innocent and that he had taken all precautions as provided under Section 61 B(2) of the Act. Learned counsel submitted that even the statement made by the driver does not indicate that the driver was also aware of the illegal nature of the transaction or that the timber involved was an item of timber which can be termed as a forest produce. The petitioner's case is that even the driver was unaware of any commission of offence. In such circumstances, the learned counsel submits, confiscation was unjust and harsh. Shri Prakash, learned Special Government Pleader for Forest brought to my notice the decision reported in **1995 (2) KLT 772** ***(State of Kerala vs. Mathew)***, wherein it is held thus:

> *"4. Sec. 61B contains two sub-sections. The first sub-section says that no order of confiscation shall be made without giving notice to the person from whom it was seized informing him of the grounds for confiscation and affording him an opportunity of*

making representation. Sub-section (2) contains a further restriction against confiscation. It says that no order of confiscation shall be made if the owner of the vehicle proves that it was used in carrying the timber "without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the vehicle and that each of them had taken all reasonable and necessary precautions against such use.

5. The restriction against confiscation contained in sub-section (2) can operate only on the combination of three postulates. First is that the owner or his agent was totally unaware of the illicit use. Second is that he had taken all reasonable and necessary precautions against such use. Third is, the person in charge of the vehicle had also taken reasonable and necessary precaution against such use. If the owner succeeds in satisfying only the first two postulates, he would not get the benefit of the restriction against confiscation. The third condition is as important as the other two and unless that also is established no advantage would practically enure to the owner of the vehicle. Sub-section (2) would remain at bay if the third condition remains unsatisfied. "

Learned counsel for the petitioner on the other hand relied on the decision reported in **2002 (1) KLJ 657** ***(D.F.O. vs. Krishnan Nair)***, wherein it is held thus:

"It is not necessary in all cases that the officer should confiscate the vehicle under Sec. 61A of the Act. That discretion should be exercised taking into account the facts of each case. In this case, we find that even though allegations are made against the

driver of the car, it is very difficult to believe unless more convincing evidence was there to conclude that the driver knew before hand that the trip was undertaken for committing offence. If a person hires a vehicle, the driver may not be able to know the intention of the person and if the driver carries such person, it cannot be said that he connived at the offence. One cannot readily infer that the driver was also aware unless there are other circumstances to show that the driver was involved in the offence. Such evidence is lacking. "

12. As regards the request for examination of witnesses and supply of relevant documents, Shri Prakash cited the Division Bench decision in **2002 (3) KLT 641** ***(D.F.O., Kothamangalam vs. Sunny Joseph)*** and submitted that a reasonable opportunity of being heard does not mean an opportunity to cross examine official witnesses. Learned counsel for the petitioner submitted that the request of the petitioner may be restricted or limited to examine such other witnesses as revision petitioner wants to examine and that it is not necessary to cross examine the official witnesses.

13. The learned counsel for the petitioner also pointed out that the peculiar facts and circumstances of the case would show that the driver was absolutely unaware of any forest offence having been committed. He referred to the proceedings in the case and submitted that the police was under the impression that the timber involved is 'Myla' whereas the forest officials at first recognised it as 'Kadambu' and finally it was concluded that the timber involved

is 'teak'. The timber log was submerged in water for quite long time and nobody was certain to which species it belongs. These are all relevant facts for consideration . I am of the view that the petitioner was not given a proper and meaningful opportunity to put forward his case and to examine witnesses. Non supply of relevant documents and even denial of an effective opportunity to peruse the records has resulted in denial of justice to the petitioner. Under the Right to Information Act, even a stranger is entitled to get the records. Then what about a person whose property is sought to be confiscated? Let the petitioner point out, after perusal of the records, as to which of the documents he wants to get copies and a petition shall be filed by the petitioner to that effect. The authorised officer shall issue copies of such documents on payment of necessary fee, if any, for the same. The petitioner shall be given an opportunity to examine his own witnesses . However, he will not be entitled to cross examine the official witnesses.

14. The learned counsel for the petitioner also submitted that though the incident took place on 14.12.1999 and O.R. was registered, no final charge is laid, which indicates that there is no statable case for the forest officials to initiate prosecution against the driver and others. Shri Prakash submitted that initiation of criminal proceedings is entirely distinct and different and it has absolutely no connection with the confiscation proceedings. It is true that proceedings for confiscation is distinct and different. At the same time, it is also

relevant for consideration whether there is any statable case for prosecution in the criminal proceedings. If no offence is committed and if no case can be initiated for commission of such offence, how can confiscation proceedings be initiated for confiscating the vehicle involved in such an incident, is the question posed by the revision petitioner. It is for the authorised officer to answer it by pointing out the relevant details . I am not expressing any opinion on the submission, but I only record the grievances voiced by the counsel for the petitioner.

For the aforesaid reasons, I set aside the order passed by the authorised officer and the judgment of the learned single Judge in C.M.A.No. 342 of 2002. The matter is remitted for fresh consideration and disposal by the authorised officer, in accordance with law and in the manner indicated above. No order as to costs.

K.T. SANKARAN,
JUDGE.

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